

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHARLES RANDOLPH,

Plaintiff,

vs.

THE STATE OF NEVADA, ex rel, NEVADA
 DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

3:13-cv-00148-RCJ-WGC

ORDER

re Plaintiff's Motion for Issuance of
 Subpoena Duces Tecum and Leave to Serve
 Same via Certified Mail Upon Third Party

Doc. # 52

Before the court is Plaintiff's Motion for Issuance of Subpoena Duces Tecum and Leave to Serve Same via Certified Mail Upon Third Party. (Doc. # 52.) Defendants State of Nevada filed a Non-Opposition to Plaintiff's motion. (Doc. # 53.)¹

Plaintiff's motion requests two-fold relief from this court. First, Plaintiff seeks an order directing that this court issue a subpoena duces tecum upon former Defendant Embarq Pay Phone Services, Inc. ("Embarq"). This component of Plaintiff's motion is **GRANTED**. The Clerk's Office is directed to send Plaintiff a subpoena duces tecum issued to Embarq Pay Phone Services, Inc.

The second component of the motion requests that this court authorize service of Plaintiff's subpoena duces tecum upon Embarq by certified mail sent to Embarq's resident as identified in Exhibit 2 of Plaintiff's motion (Doc. # 52 at 12). Exhibit 2 appears to be an undated print-out from the Nevada Secretary of State's office. It identifies "The Corporation Trust Company of Nevada" as the resident agent for "Embarq Payphone Services, Inc."² However, when the court conducted a business entity

¹ Defendant Embarq Pay Phone Services, Inc., was dismissed with prejudice from this litigation. The only remaining Defendants are those represented by Deputy Attorney General Benjamin Johnson.

² The court also notes that Plaintiff's Exhibit 2 reflects that Embarq Payphone Services, Inc.'s business licence expired on 10/31/2013.

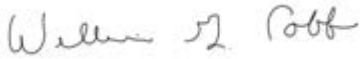
1 search at the Nevada Secretary of State website (<https://www.nvsilverflume.gov/businessSearch>), the
2 website responded there were “no results for entity name search on Embarq Payphone Services, Inc.”
3 *See*, Exhibit 1 hereto.

4 The Business Entity Information Plaintiff submitted (Exhibit 2; Doc. 52 at 12) for Embarq
5 Payphone Services, Inc., also contained a “Nevada Business I.D.” of NV19971285398. The court
6 utilized the Nevada Secretary of State website’s “Business ID” search capability. No results for a Nevada
7 Business ID with that number was located. *See*, Exhibit 2 hereto. Therefore, it does not appear Embarq
8 is presently a registered Nevada corporation, or that The Corporation Trust Company of Nevada is a
9 resident agent for Embarq.

10 The court is aware that there is a question whether service can be effected other than by personal
11 service or by delivery to the recipient’s place of business. *See, Ott v. City of Milwaukee*, 682 F.3d 552,
12 557 (7th Cir. 2012) (personal service not required); *Hall v. Sullivan*, 229 F.R.D. 501 (D. Md. 2005)
13 (discussing split of authority). However, in view of the discrepancies surrounding Embarq’s Nevada
14 corporate status or its resident agent, if any, the court at this time declines to specifically authorize
15 service in the mode Plaintiff has requested.

16 **IT IS SO ORDERED.**

17 DATED: January 7, 2014.

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19 _____
20 WILLIAM G. COBB
21 UNITED STATES MAGISTRATE JUDGE
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Nevada Business Search

* Includes Trademarks, Trade Names, Service Marks, Reserved Names & Business Licenses

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No results for entity name search on "Embarq Payphone Services, Inc."

NOTE: This website has been tested to work with Microsoft Internet Explorer 7 or 8 and Mozilla Firefox 3 or greater.



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Exhibit 1

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No results for NV business ID search on "NV19771285398"

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Exhibit 2